

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SAFEWAY, INC.

Employer,

and

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 555

Petitioner.

ALBERTSONS LLC

Employer,

and

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 555.

Cases 19-RC-285965
19-RC-285966

Case 19-RC-285967

**SAFEWAY, INC. AND ALBERTSONS LLC'S
REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION;
SPECIAL REQUEST TO STAY ELECTION PENDING BOARD'S DECISION**

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I. INTRODUCTION & FACTUAL BACKGROUND

Pursuant to Section 102.67 of the Board's Rules and Regulations, Safeway, Inc. and Albertsons LLC (collectively, Albertsons or the Employers) hereby request review of the Regional Director's May 24, 2022 Decision and Direction of Election and, further, that the Board stay any election proceedings pending the outcome of the Board's review.

Albertsons operates grocery stores and pharmacies across the United States. The United Food and Commercial Workers, Local 555 (Union) petitioned to represent three separate units of all full-time and regular part-time pharmacy technicians and pharmacy clerks employed by Albertsons at each of the following stores: 591, 1478 and 1800 (collectively, the petitioned-for stores). Albertsons and the Union are parties to a multi-store collective bargaining agreement covering the single-store voting groups incorrectly found appropriate by the Regional Director, as well as 49 additional stores in the Portland, Oregon metropolitan area, 44 of which contain pharmacies.

The Union argued that the petitioned-for voting groups at the individual stores were appropriate for self-determination elections. In the alternative, the Union sought to represent the petitioned-for employees as stand-alone stores on the basis they are presumptively appropriate single-facility units.

After holding a hearing on December 9, 20, and 13, 2021 via Zoom, the Regional Director declined to order the self-determination elections sought by the Union because the pharmacy technicians and/or pharmacy clerks in the petitioned-for voting groups respectively constitute identifiable, distinct segments of the Employers' workforces, but do not share a community of interest with employees in the existing unit.

In the alternative, the Regional Director did find that the petitioned-for single-store units are presumptively appropriate, and the Employers did not show integration substantial enough to negate the separate identity of the single-store units. More specifically, the Regional Director relied on *Starbucks* in erroneously determining that the pharmacy managers play a significant role in personnel matters regarding the petitioned-for units and, therefore, there is significant local autonomy over labor relations. As such, the Regional Director ordered three separate elections for pharmacy technicians and pharmacy clerks at each of the petitioned-for stores.

The Regional Director erred in his determination as the single-store units are inappropriate because there is functional integration in this case as the evidence adduced by the Employers clearly demonstrates more than centralization alone. Contrary to the Regional Director's conclusions, final decision making with regard to hiring, scheduling, and discipline involve not only the Pharmacy Manager, but the Pharmacy District Manager, the Centralized Pharmacy Coordinator and Pharmacy Corporate. The evidence unmistakable weighs in favor of finding that there is centralized control over daily operations and labor relations.

Further, the Regional Director inexplicably declined to give the appropriate weight to his conclusion that employee skills, functions and working conditions support a rebuttal of the presumptively appropriate unit. This, coupled with the finding that training is centralized, unequivocally rebuts the presumption that the standalone units are appropriate.

The appropriate unit can only be all full-time and regular part-time pharmacy technicians and pharmacy clerks at all pharmacies in the Portland Division or, at a minimum, those covered by the parties' multi-store collective bargaining agreement in the Portland metropolitan area, of which 44 stores have pharmacies.

Due to the nature and complexity of the issues before the Board and the potential impact on workers in approximately 44 pharmacies who may be denied their Section 7 rights if the election proceeds as currently scheduled, the Board must stay the election until it completes its review of the Regional Director's decision.

II. STATEMENT OF FACTS

A. Organizational Structure

Albertsons, LLC and Safeway, Inc. are subsidiaries of Albertsons Companies, Inc., which operates grocery stores and pharmacies in 34 states and the District of Columbia under 20 different “banners” or store names, which include Safeway and Albertsons. JX 17 ¶ 1-2. Albertsons has 13 separate divisions organized geographically across the United States. JX 6; JX 17 ¶ 2. The stores that are relevant to the current matter are a part of the Portland Division of Albertsons. JX 17. The Portland Division covers stores in Oregon and South Washington and covers 125 pharmacies, which are organized into seven geographic districts -72, 73, 74, 75, 76, 77, and 78. JX 5; JX 17 ¶ 3, 4 and ¶ 6. The stores at issue in this matter are located in Districts 72 and 75. JX 6; JX 17 ¶ 20. The Union has an extensive bargaining history with both Albertsons and Safeway within the Union's jurisdiction going back many years. JX 17 ¶ 23. The collective bargaining agreement which covers Albertsons stores—under both the Safeway and Albertsons banners—in the Portland metropolitan area covers multiple employers, including Kroger (Fred Meyer). JX 17. This agreement, referred to as the “Portland and Vicinity” contract, has existed as a multi-retailer, multi-store agreement since 1936. Tr. 386:8-12. The Portland and Vicinity contract's jurisdiction extends to all Safeway- and Albertsons-bannered stores in Multnomah, Washington, Clackamas, Columbia, and Yamhill Counties, Oregon. JX 17 ¶ 20, JX 1. Yet, the Union's petitioned-for voting group seeks only to add three of the forty-four stores with pharmacies which fall under that agreement. BX 1 and 4.

B. Pharmacy Department

All matters involving the pharmacy profession, including compliance and licensing matters are the responsibility of the Corporate Vice President of Pharmacy. JX 17 ¶ 12. The Pharmacy Corporate Offices (“Pharmacy Corporate”), which are located in the Albertsons Corporate Headquarters in Boise, Idaho, cover all Albertsons pharmacies nationwide. JX 17 ¶ 12. There are four District Pharmacy Managers who supervise the pharmacies in the Portland Division. JX 17 ¶ 9. They report to the Portland Division Director of Pharmacy Operations, Stephen Certo. JX 17 ¶ 9; JX 5. The Director of Pharmacy Operations reports to both the Portland Division Vice President of Operations, Ryan Kidwell, and the Albertsons Corporate Vice President of Pharmacy, Nasri Massaad. JX 17 ¶ 10.

At the time the petitions at issue were filed, Raed Alzahrani and Quang Nguyen were the district Pharmacy Managers for the stores covered by the Portland and Vicinity contract. JX 11; Tr. 135:12-14. The District Pharmacy Managers provide guidance on pharmacy operations. Tr. 135:15-18. District Pharmacy Managers conduct internal compliance audits, to ensure compliance with state and federal regulations. Tr. 325:5-12; 326:20-23. They also oversee the bi-yearly store audits in the pharmacy, which are conducted by an outside third-party. Tr. 451:15-25. District Pharmacy Managers are in regular contact with the Pharmacy Managers at the stores they supervise, including via monthly in-person visits and weekly conference calls. See, e.g., 136:3-7; 325: 6-12. On some occasions, multiple District Pharmacy Managers and all Pharmacy Managers are on the conference call. Tr. 327:6-13. The Pharmacy Managers and their District Pharmacy Manager also communicate via text messages, emails or phone calls several times per week about a whole range of operational matters, including promotions, financial issues, employee training, and staffing issues. Tr. 136:8-16; 351:8-11.

Separate and distinct from the pharmacy, there are seven District Managers, each assigned to a district within the Portland Division. JX 17 ¶ 5. The District Managers supervise all aspects of store operations, except matters occurring in the pharmacy. JX 17 ¶ 5. Store Directors report to their assigned District Manager. Tr. 464:17-25. Store Directors supervise every department except for the pharmacy department. Tr. 403: 20-23.

1. Pharmacy Personnel

Personnel in the Albertsons LLC and Safeway, Inc. pharmacies include some combination of the following job titles: Pharmacy Manager¹, Pharmacist, Pharmacy Technician, and Pharmacy Clerk. JX 17 ¶ 6; JX 8. The staffing at the petitioned-for pharmacies are as follows:

Store	Pharmacy Manager	Staff Pharmacist	Pharmacy Technician	Pharmacy Clerk
591	1	1	2	0
1478	1	2	3	1
1800	1		1	0

Tr. 119:24-1204; 300:2-4.

The Pharmacy Manager at each store is solely responsible for managing and running the pharmacy. Tr. 149: 21-150-2; 353:3-4. They are in charge of operations, ensuring compliance with the Oregon Board of Pharmacy regulations, filing and ordering medications, scheduling employees and taking care of customers. See, e.g., 120:6-18; 150:6-23; 300:6-13. The Pharmacy Manager reports to the District Pharmacy Manager. Tr. 135:8-14. The Pharmacy Manager directs the day-to-day tasks of all employees in the pharmacy, including pharmacy technicians and clerks. Tr. 126:17-19; 353: 6-8. The staff Pharmacist² has the same duties as the Pharmacy Manger. Tr. 123:6-

¹ The parties have stipulated that the Pharmacy Manager is a Sec. 2(11) supervisor. JX 17 at 6.

² The parties have stipulated pharmacists are professional employees as defined at 2(12) of the National Labor Relations Act. JX 17 at 6.

10; 305:14-21. When the Pharmacy Manager is not present, the pharmacist on duty directs the operations of the pharmacy. Tr. 123:14-16.

Pharmacy is a highly regulated industry, at both a state and federal level. See, e.g., Tr. 632:18-19. The Oregon Board of Pharmacy (“Board of Pharmacy”) licenses pharmacy employees and regulates pharmacy operations in the State of Oregon. Tr. 120:19-121:3. Under the Board of Pharmacy regulations, there must always be a licensed pharmacist on duty and physically present when the pharmacy is open to the public. Tr. 123:11-13. The Board of Pharmacy regulations forbid any individual who is not HIPAA-certified from entering the non-patient areas of the pharmacy, and these areas must remain locked at all times. Tr. 91:13-16. Each pharmacy has a designated HIPAA-storage area, where the pharmacy keeps three years of patient records. See, e.g., JX 2; Tr. 92: 4-9. The pharmacy is required to maintain these documents under state and federal law. Tr. 319:15. Only a licensed pharmacist has a key and is able to access the HIPAA storage area. Tr. 319:15-18. After three years, they are packed in boxes and marked accordingly by the pharmacy technician and shipped to an Albertsons warehouse where the patient records from all Albertsons pharmacies are kept. Tr. 93:16-25. The content of the boxes is recorded in a Corporate Pharmacy software system. Tr. 94: 16-95:10. Pharmacists are also the only persons who can perform data verification, product verification and counsel patients. Tr. 312:2-5 and 20-24.

Pharmacy technicians perform the same job duties, regardless of pharmacy location. Tr. 481:24-482:1; 583:16-584:3. The pharmacy technician’s duties include data entry, filling prescriptions, ringing out customers, performing returns, helping put away orders, filing prescriptions, restocking vials and supplies, cleaning and taking out the garbage³. See, e.g., Tr.

³ HIPAA papers, vials and prescription information are disposed of in a locked HIPAA trash bin that is in the pharmacy. Tr. 7-10. Only the company that picks up the HIPAA trash bin and the pharmacy staff have the combination to the padlock on the HIPAA bin. Tr. 319:1-5; 658:22-659:7.

58:6-23; 61:15-23; 64:7-12; 72:12-14; 72:25-73:11; 552:8-24; 559:5-6; 560:12-13; 625:12-20; JX 9. Pharmacy employees also unpack the daily deliveries of pharmaceuticals from McKesson.⁴ Tr. 61:15-32; 121:7-15. Pharmacy employees use the phone in the pharmacy to speak to other Albertsons and Safeway pharmacies,⁵ medical providers, insurance companies and customers about prescriptions.⁶ Tr. 77:24-25; 80:4-14; 596:4-7. Although the Pharmacy Manager directs the work of Pharmacy Technicians, the District Pharmacy Manager sets work priorities and identifies certain tasks that need to be completed. Tr. 359:12-16. Pharmacy technicians are able to give vaccinations after receiving immunization and CPR training. Tr. 127:4-13; 315:7-21; 598:12-599:2. Safeway and Albertsons offered training to any interested pharmacy technician. Tr. 127:14-19.

Pharmacy technicians must be both licensed by the Oregon Board of Pharmacy and certified by the Pharmacy Technician Certification Board. Tr. 75: 8-14; JX 9. They must renew their licenses with the Board of Pharmacy every two years. Tr. 126:20-25; 313:18-20; 475:19-20. As part of that renewal process, they must complete approximately 20 continuing education credits on a bi-yearly basis. Tr. 127:1-3; 313:18-20; 475:22-476:4. All pharmacy technicians must complete pharmacy-specific training through the employee portal by way of the learning cart. Tr.

⁴ McKesson delivers its product directly to the pharmacy. Tr. 61:24-62:21; 161:18-21; 301:17-18. No other department within the store receives a delivery of supplies directly to them, rather than through the store's inventory system. Tr. 338:6-14; 338:24-25, 339:1-4.

⁵ Pharmacy employees call other pharmacies for supplies and medications a couple times a week. Tr. 137:4-6; 12-14; Tr. 328:16-19. In addition, pharmacies contact each other in the routine course of business to reverse prescriptions and ask questions about the EPS or regulatory or company policy. Tr. 328: 1-12; 597: 4-8; 653:3-15. Store 1478 has borrowed vials from store 1800. Tr. 328: 12-15.

⁶ The pharmacy has its own outside phone line. Tr. 106: 10-12; 23. No other department in the store has one. Tr. 234:19-235:1. At Store 591, the store is unable to transfer calls from the pharmacy to other departments in the store. Tr. 79:15-19.

89:14-23; 624:1-9. The District Pharmacy Manager typically notifies pharmacy technicians of their required training. *See, e.g.*, Tr. Tr. 46:4-9;46:23-47:6; 590:11-16.

Pharmacy clerks assist on the will-call end, ringing up prescriptions, and put away the drug orders. Tr. 316:17-317:4. While they are not licensed by the Oregon Board of Pharmacy, pharmacy clerks must complete pharmacy-specific HIPAA training before they are able to work in the pharmacy. Tr. 317:11-16. Generally speaking, Pharmacy employees undergo a considerable amount of specialized training.

Pharmacy clerks or new hires who express an interest in becoming a pharmacy technician to the Pharmacy Manager are placed in the job title of pharmacy technician trainee. JX 17 ¶ 7. Interested employees at any pharmacy in the Portland Division may become pharmacy technician trainees. JX 17 ¶ 7. Interested employees must then apply for a technician-in-training license from the Board of Pharmacy. Tr. 313:8-10. Pharmacy technician trainees then complete the necessary training modules offered through Albertsons' online training portal ACIU. Tr. 314:22-315:3; JX 10. They also have the opportunity to complete on-the-job training. Tr. 313:12-13. After completing the required modules, trainees take the certification exam offered by the Pharmacy Technician Certification Board. JX 17 ¶ 7; JX 10. Once they pass the exam, the trainees are licensed as pharmacy technicians by the Oregon Board of Pharmacy. *Id.*

All pharmacy employees are required by state law to be fully vaccinated against COVID-19. Tr. 128:3-4; 319:6-8. The record shows that no other Albertsons employee is required to be vaccinated against COVID-19. Tr. 128:5-7; 319:9-11.

2. Pharmacy Workflow

Safeway and Albertsons pharmacies provide the same type of services to patients and customers and sell the same types of products. Tr. 482:2-7. Pharmacy technicians and clerks generally do not perform any work outside the four walls of the pharmacy.⁷ *See, e.g.*, Tr. 127:20-128:2. Generally, the pharmacy process begins when a prescription is taken in at the drop-off window or received electronically (e-prescribed prescription). Tr. 123:17-21; 593:21-594:3. Whomever is working at the drop-off window will verify that all necessary information can be found on the prescription and type it into the EPS system. *Id.*; Tr. 14-16; 306:7-14. After that step is complete, the prescription goes to data verification, where a pharmacist reviews the prescription to ensure it is correct as written and does not have any negative interactions with other medications prescribed to the patient. Tr. 124:16-18; 307:10-3-8:5. Once that review is complete, the prescription is then filled and labeled. Tr. 99:5-100:7; 124:20-23; 308:5-10. During the filling process a counting tray and spatula are used to count the pills. Tr. 101:11-13; 308:13-16. These same tools are used in every pharmacy. Tr. 101:14-18; 484:9-12; 584:4-17. After the prescription is filled, it is again verified for accuracy by the pharmacist before being placed in will-call, where it can be picked up by the patient/customer. Tr. 100: 13-15; 125:19-126:2; 310:10-20.

All tasks in this prescription-filling process, from intake through final delivery to the patient, are processed through the EPS system⁸. Tr. 99:7-13. EPS is a pharmacy software used at all Albertsons pharmacies—under both the Safeway and Albertsons banners—in the Portland

⁷ Pharmacy technicians and clerks also on occasion leave the pharmacy to assist customers finding items on the shelves outside the pharmacy. However, the specific testimony in the record demonstrates that it happens on limited occasions because the pharmacy employees are too busy to leave the pharmacy. Tr. 60:6-11. It is also very rare for a pharmacy employee to pull items from the general merchandise shelves to fill a prescription. Tr. 90:24-91:13.

⁸ The EPS system can also automatically order medications. Tr. 121: 15-20; 301:4-9.

division.⁹ Tr. 124:508; 306:18-22. To access the EPS system during their shift, a pharmacy employee must use a biometric scan of their fingerprint. Tr. 66:22-24; 306:25-307:4. Pharmacy employees are therefore scanning their fingerprint for every prescription-related function in the pharmacy. Tr. 98:14-17. Only pharmacy employees have access to the EPS system. Tr. 99: 2-3; 306:23-24. When a pharmacy employee works at another store, either as a float or picking up a shift, they have access to the EPS system at that store. Tr. 133:5-9; 323:113-15; 480:9-13; 649:5-8. No other departments in the stores use the EPS system. Tr. 124:9-11.

Pharmacy employees even use the EPS system when a customer comes to pick up a prescription.¹⁰ Tr. 66:7-11; 656:3-18. When a customer arrives to pick up their prescription, the pharmacy employee at the register must first enter their name and date of birth into EPS to verify their identity and what prescription is to be dispensed. Tr. 669-12; 311:1-2; 590:17-591:7; 656:3-18. The pharmacy employee then scans the barcode on the prescription bottle label—which is created by the EPS system—with the cash register/point of sale system.¹¹ Tr. 67:2-20; 99:24-100:2; 101:3-8; 311:13-15; 656:25-657:9.

3. Pharmacy Hours and Terms of Employment

i. *Pharmacy Hours and Scheduling*

The Portland Division sets the hours of operations for each store pharmacy. JX 17 ¶ 13.

The hours of operation for the petition-for stores are as follows:

⁹ Pharmacies in the Portland Division have a separate IT help desk. Tr. 395:5.

¹⁰ Clerks in other parts of the store are not able to ring up pharmacy prescriptions at their cash register/point of sale system. Tr. 83:5-9.

¹¹ Pharmacy employees have to pick up their cash till from the bookkeeper at the store when the pharmacy opens and return it at the end of the day, when the pharmacy closes. Tr. 231: 13-15; 235: 16-18; 266:7-15. However, the bookkeeper puts the cash tills in cash registers for the cashiers. Tr. 280:5-7.

Store	Hours of Operation
591	Monday-Friday: 9 a.m.-8 p.m.; Saturday: 9 a.m.-5 p.m. Sunday: 10 a.m.-5 p.m.
1478	Monday-Friday: 9 a.m.-9 p.m.; Saturday: 9 a.m.-6 p.m. Sunday: 10 a.m.-6 p.m.
1800	Monday-Friday: 9 a.m.-9 p.m.; Saturday: 9 a.m.-6 p.m. Sunday: 10 a.m.-6 p.m.

Tr. 119:21-25; 299:24-300:1. The Portland Division allocates a number of weekly pharmacist hours and weekly pharmacy technician hours to each pharmacy. JX 17 ¶ 14. These hours are designed based on a model, which incorporates the volume of prescriptions per store.¹² JX 17 ¶ 14; Tr. 128:22-24. This model is designed by Pharmacy corporate. JX 17 ¶ 14. These allocations are reevaluated on quarterly basis and are rolled out on the first week of the new quarter. JX 17 ¶ 14. The District Pharmacy Manager communicates the allotment to each of their Pharmacy Managers. Tr. 320: 17-19. The Pharmacy Manager must obtain approval for additional hours and labor help from Pharmacy Corporate and the District Pharmacy Manager. Tr. 320:24-321:8.

At the pharmacy of each of the petitioned-for stores, the Pharmacy Manager drafts the schedule for the pharmacy technicians and clerks. See, e.g., 128:8-10; 619:17-18. The Pharmacy Manager then inputs the schedule into the Empower scheduling system or provides a copy to the Store Director or Service Operations Manager, who does so. Tr. 130:19-131:1; 321:20-25; 682:1-5; 20-23. While the Empower system is used to track the amount of labor hours allocated to the store based on forecasted sales, the Store Directors do not dictate the hours scheduled by the pharmacy for its employees. Tr. 193:12-194:1; 415:2-10. Unlike other departments they supervise, Store Directors do not have any control over the pharmacy's labor budget. Tr. 140:8-18.238:20-

¹² The Store Director has not control over the profitability of the pharmacy. Tr. 752:6-8.

24, 739:5-11. The Store Director also cannot reallocate hours from the pharmacy to other departments within the store. Tr. 115:8-15. As Jason Rauls, Store Director at 591 explained, “I don’t really do a whole lot of the pharmacy aspect of it.” Tr. 185:16-19. In fact, Jason Rauls and Store Director at 1478, Jim Kuhn, testified they do not direct any of the activities in the pharmacies. Tr. 188:25-189:4; 407: 18-20.

ii. *Pharmacy Float Technicians*

There is a float pool of pharmacy technicians, which is used to fill shift vacancies at pharmacies in the Portland Division. JX 17 ¶ 21. Float pool pharmacy technicians do not regularly work out of an assigned home store. *Id.* Float pool pharmacy technicians perform the same job duties as other pharmacy technicians who permanently work at the pharmacy. Tr. 484:25-485:7. Float pool pharmacy technicians are scheduled by the Pharmacy Coordinator, Sara Vongthongthip, typically on a monthly basis. *Id.* A document showing the Float Pool Expectations is Joint Exhibit 15. *Id.* When a pharmacy in the Portland Division needs to fill scheduled shift vacancies, they ask Pharmacy Coordinator Vongthongthip for coverage through a float technician about two months in advance. See, e.g., 131:5-18; 131: 22-23; 132:8-11; 322:15-21. Each of the petitioned-for stores have relied on float technicians on multiple occasions over the last two years. JX 16C. Ryan Clevens, the pharmacy manager at store 591, and Timothy Peterson, the pharmacy manager at store 1478, both testified that float technicians have worked in their pharmacies. Tr. 133:1-4; 323:5-7.

Pharmacy Float Technician Cindy Perrone works at all pharmacies-both Safeway and Albertsons-in the Portland, Oregon area. Tr. 476:20-477:4; 478:21-23. Ms. Perrone has worked as a pharmacy float technician in about 25 different stores. Tr. 477:4-11. Specifically, Ms. Perrone has worked as a float technician at store 591, 1478 and 1800. Tr. 486:7-16. As a float technician,

she is a full-time employee working 40 hours a week.¹³ Tr. 477:12-17. Ms. Perrone receives a schedule once a month from Sara Vongthongthip, which sets out her schedule for the whole future month. Tr. 477:18-25. There are approximately seven float technicians on Ms. Perrone's float team. Tr. 507:11-13

Pharmacy float technicians wear the same color smock and name tag and receive the same vacation and benefits as other pharmacy technicians. Tr. 487:1-22. Pharmacy float technicians also receive the same rate of pay and follow the same work rules and federal and state regulations at every pharmacy. Tr. 489: 16-23. Ms. Perrone also explained that in the approximate 25 pharmacies she has worked there has been no differences in how the pharmacists assign work to pharmacy technicians. Tr. 503:25-504:3. Ms. Perrone testified that if she needs to call off, she typically contacts her District Pharmacy Manager. Tr. 488:11-489:7.

iii. *Pharmacy Interchange*

The record shows that employees from other parts of the store do not, cannot and should not fill vacant shifts in the pharmacy.¹⁴ Tr. 324:25-325:2. Instead, pharmacy employees transfer between stores to fill shift vacancies, particularly short notice shift vacancies. JX 17 ¶ 22; JX 16A, 16B. Each of the three petitioned-for stores had pharmacy technicians from another store fill vacant shifts over the last two years. *Id.*

Pharmacy employees regularly pick up shifts at other stores. JX 16A. For example, Ms. Perrone testified that when she reviews her float technician schedule, she can see that there are pharmacy technicians that need more hours and so they volunteer to work at another store. Tr. 509:5-13. Amy White, a pharmacy technician at Store 1478, has worked at least ten shifts at other

¹³ Pharmacy Float Technicians perform the same job duties as Pharmacy Technicians. See, e.g., Tr. 479:12-480:21.

¹⁴ Clerks covered by the Local 555 Portland and Vicinity contract regularly cover shift vacancies in other departments within the store, but not in the pharmacy. Tr. 691:21-692:18; 701:25-702:3.

pharmacies in the last year. Tr. 570:17-20. Two stores, including store 1800, text Ms. White “quite often” to see if she is available to cover a shift at their store. Tr. 576:1-9; 577:3-5. As further illustration, David Silva, a pharmacy technician at Store 591, picked up an average of two shifts per month at other pharmacies in the Portland area in 2021. JX 16A. This trend existed long before the COVID-19 pandemic, and is illustrated best by Store 1800, where pharmacy technicians from other locations picked up an entire week of shifts at the store. JX 16B.

Pharmacy Managers rely on these transfers to staff the pharmacies. As Store 591 Pharmacy Manager Ryan Clevens testified, he has to find coverage for short-notice vacant pharmacy shifts “a couple times a month” Tr. 134:9-15. As the record shows, Pharmacy Managers regularly contact the Pharmacy Managers at neighboring stores or pharmacy technicians directly to see if they are able to pick up vacant shifts. *Id.*; Tr. 323:16-324:1. For example, Store 1478 Pharmacy Manager Timothy Peterson has pharmacy technicians at his store who “routinely” help out at store 1800 in Sherwood. Tr. 324:3-5.

Pharmacy Managers also contact the Pharmacy Coordinator Sara Vongthongthip or their District Pharmacy Manager to find available pharmacy technicians within the Portland Division. Tr. 133:13-18. Store Directors generally do not have a role in helping the pharmacy manager fill vacant shifts in the pharmacy. Tr. 231:22-25.

iv. *Pharmacy Wages and Benefits*

The Portland Division sets the wage scale for all pharmacy employees. JX 17 ¶ 13. The wage scale is the same for all pharmacy technicians and pharmacy clerks in the Portland metropolitan area. Tr. 482:21-24. Hourly non-represented Albertsons LLC employees in the Portland Division have the same vacation benefits and are offered the same health insurance plans and 401(k) plans. JX 17 ¶ 15. Similarly, hourly non-represented Safeway, Inc. employees have the

same vacation benefits and are offered the same health insurance plans and 401(k) plans. *Id.* These benefits are all set by Albertsons. *Id.* The work week for purposes of payroll is Sunday to Saturday and is set by Albertsons. JX 17 ¶ 16. The hourly employees in the Portland Division stores use the same timeclock in the general breakroom to record their hours. See, e.g., 226:11-13; 261:2-11. The pharmacy is closed on six holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas as decided by Pharmacy Corporate.¹⁵ Tr. 142:1-6; 330:22-24.

v. *Pharmacy Human Resources, Hiring and Discipline and Uniforms*

All Portland Division employees are covered by the same employee policy guide and attendance policy. JX 17 ¶ 17 and ¶ 19; JX 12. Additionally, all Portland Division employees who operate a cash register are covered by the same Cash Register Operator Guide. JX 17 ¶ 18; JX 13. Pharmacy technicians wear blue scrubs and a badge with their name and title.¹⁶ Tr. 40:18-24; 41:15-16; 141:13-15; 330:4-5; 622:6-10. The job title on the name badge is required by the Board of Pharmacy.¹⁷ Tr. 141:20-25; 330:9-11. This uniform and name badge is the same for float pharmacy technicians. Tr. 825:22-24. Pharmacists wear white smocks. Tr. 141:16. Pharmacy Corporate sets the uniform for pharmacy employees. Tr. 141:17-19; 330:14-16.

Hiring in the pharmacies is controlled by Pharmacy Corporate at the Portland Division level. Tr. 143:13-144:18. The Pharmacy Manager reaches out to their District Pharmacy Manager about a staffing need and the District Pharmacy Manager decides whether to open a requisition for the job. Tr. 144:6-12; 332:9-15. The Pharmacy Manager then works with the pharmacy recruiter—Jenny Tackett or Kimberly Grassnickle—to fill the vacancy. Tr. 332:17-22. For pharmacy

¹⁵ The rest of the store is open on those holidays. Tr. 142:7-10; 330:25-331:2.

¹⁶ Clerks covered by the Local 555 Portland and Vicinity contract are supposed to wear jeans, khaki pants, or black pants, with a collared shirt or Safeway-provided shirt. Tr. 269: 9-17.

¹⁷ Clerks in other parts of the store do not have their job title on their name badge. Tr. 269:18-270:3.

technician and pharmacy clerk positions, the Pharmacy Manager conducts interviews with the applicants and then makes the final decision on who to hire.¹⁸ Tr. 143:20-23; 145: 13-15; 332:19-21.

The Pharmacy Manager is responsible for administering performance reviews for the pharmacy employees. Tr. 47:7-12; 144:19-23. Pharmacy Managers complete a scoresheet for each employee, which Pharmacy Corporate provides to them. Tr. 144:25-145:7.

Pharmacy Managers, in consultation with their district Pharmacy Managers, issue discipline to pharmacy employees. Tr. 47:25-48:6; 142:11-22; 331:6-11. Timothy Peterson, Pharmacy Manager at Store 1478, explained he would consult with his District Manager as to whether a particular action by a pharmacy employee required discipline. Tr. 331:12-20. Discipline of float pharmacy technicians is handled by either the Pharmacy Manager of their home store or the District Pharmacy Manager. Tr. 824:1-15.

In addition, Pharmacy Corporate sets the promotions for and provides the promotion materials to all pharmacies in the Portland Division. 176:21-177:6. On a quarterly basis, Pharmacy Corporate has compliance inspectors that physically review the pharmacy to ensure that everything is being done in accordance with company standards. Tr. 325:17-23.

III. ISSUES FOR REVIEW

Whether the single standalone petitioned-for pharmacies directed by the Regional Director are not an appropriate unit and must include all of the Employer's store locations in the Portland Division, or at the least those stores in the Portland Metropolitan Area covered by the Portland and Vicinity Collective Bargaining Agreement?

¹⁸ For pharmacy employees, the store director's role in the hiring process is limited to conducting the drug screening of the prospective hire. Tr. 745:9-11.

Whether the election should be stayed pending review?

IV. ARGUMENT

A. The Regional Director Erred in Finding No Substantial Integration, as there is not Sufficient Local Autonomy to Support the Standalone Units Found Appropriate.

The Regional Director's Decision and Direction of Election must be reversed because he failed to properly consider the lack of independent discretion Pharmacy Managers actually have over the day-to-day operations of the pharmacies and declines to give the appropriate weight to his conclusion that employee skills, functions and working conditions support a rebuttal of the presumptively appropriate unit. This, coupled with the finding that training is centralized, unequivocally rebuts the presumption that the standalone units are appropriate.

In addition, the facts are distinguishable from *Starbucks* in that the Employer has offered more than conclusory evidence that the Employers' national operations does more than merely provide tools and policies that the pharmacy-managers implement at the local level. To the contrary, the record is replete with evidentiary support that the petitioned-for units are functionally integrated with the other pharmacies.

A petitioned-for single store unit is presumptively appropriate, unless it has been functionally integrated or so merged that it has lost its separate identity. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). A party may rebut this presumption by showing substantial integration, which negates the separate identity of single store unit. *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). The Board considers the following factors in determining whether the single-store presumption has been rebutted: (1) central control over daily operations and labor relations, including the extent of autonomy; (2) similarity of employee skills, functions, and

working conditions; (3) degree of employee interchange; (4) the distance between locations; and (5) bargaining history. *Trane*, 339 NLRB 866 (2003).

Applying the facts in this case to the above factors compels the conclusion that the Regional Director's decision was incorrect and the only appropriate unit is all of the Employers' pharmacies in the Portland Division.

1. Central Control Over Daily Operations and Labor Relations

The Regional Director relies on *Starbucks* in holding that the petitioned-for pharmacy technicians and/or pharmacy clerks perform their day-to-day work under the immediate supervision of the pharmacy manager and, therefore, local autonomy favors the Union's petitioned-for single store units. The Regional Director dismisses the Employers' proffered evidence in a sweeping fashion, even though he agrees that the record contains evidence of "extensive standardization" by the Employers over "numerous personnel matters."

Pharmacy technicians and clerks are subject to central control over daily operation and labor relations. All matters involving the pharmacy profession, including compliance and licensing matters are the responsibility of the Corporate Vice President of Pharmacy. The Pharmacy Corporate Offices, located in the Albertsons Corporate Headquarters in Boise, Idaho, cover all Albertsons pharmacies nationwide. Pharmacy Corporate sets the promotions for and provides the promotion materials to all pharmacies in the Portland Division. They also set the uniforms for all pharmacy technicians and pharmacy clerks throughout the Portland Division. Pharmacy Managers and District Pharmacy Managers in the Portland Division attend monthly calls. On a quarterly basis, Pharmacy Corporate has compliance inspectors that physically review the pharmacy to ensure that everything is being done in accordance with company standards.

Hiring within the pharmacies is controlled by Pharmacy Corporate. The District Pharmacy Manager typically notifies pharmacy technicians of their required training. In conducting pharmacy employee reviews, Pharmacy Managers complete a scoresheet for each employee, which Pharmacy Corporate provides to them. Pharmacy Managers, in consultation with District Pharmacy Managers, handle pharmacy specific discipline issues for the stores. For example, Timothy Peterson, Pharmacy Manager at Store 1478, explained he would consult with his District Manager as to whether a particular action by a pharmacy employee required discipline. Tr. 331:12-20.

If additional labor hours are needed Pharmacy Managers consult with, and obtain authorization from, the District Pharmacy Manager. As mentioned above, Pharmacy Coordinator Sara Vongthongthip helps all Portland Division pharmacies—including those in the petitioned-for unit—coordinate the pharmacy technician schedules. More specifically, Pharmacy Managers contact Ms. Vongthongthip or their District Pharmacy Manager to find available pharmacy technicians within the Portland Division. Tr. 133:13-18.

All 44 of the pharmacies in the Portland metropolitan area are subject to the same personnel policies and terms and conditions of employment, which are issued through Albertson Corporate headquarters in Boise, Idaho. Pharmacy employees in all stores all have the same wage scale, vacation benefits, retirement benefits, health insurance benefits, work rules and holiday schedule.

The evidence adduced by the Employers demonstrates more than centralization alone. Contrary to the Regional Director's conclusions, final decision making with regard to hiring, scheduling, and discipline involve not only the Pharmacy Manager, but the Pharmacy District Manager, Centralized Pharmacy Coordinator and Pharmacy Corporate. This evidence weighs

against local autonomy. This, coupled with the finding that training is centralized, weighs in favor of finding that there is centralized control over daily operations and labor relations.

2. Employee Skills, Functions, and Working Conditions

The Regional Director found that this factor supports the Employers meeting their burden of rebutting the single unit presumption.

3. Degree of Employee Interchange

The evidence clearly demonstrates that there is substantial employee interchange and functional integration between the pharmacy technicians and pharmacy clerks in the Portland Division. When there are shift vacancies in the pharmacies at the petitioned-for stores or other stores, each pharmacy tries to pull help from other stores or uses the pharmacy technician float pool. The Pharmacy Coordinator, from the Corporate Offices, is also contacted to see if she has a pharmacy employee to fill the vacancies. This is a very common practice throughout the Company pharmacies. These processes are controlled by the Portland Division, not individual stores.

While the Regional Director brushed the Employers evidence to the side as anecdotal, Amy White, a pharmacy technician at Store 1478, testified that she worked at least ten shifts at other pharmacies in the last year, and two stores, including store 1800, text her “quite often” to see if she is available to cover a shift at their store. The Regional Director also erroneously gave no weight to the fact that 14% of Store 1800’s pharmacy technician hours were worked by pharmacy technicians from other Portland metropolitan area pharmacies.

4. Distance Between Locations

When determining the scope of a retail bargaining unit, the Board considers the appropriateness of the administrative or geographic area covered by the petitioned-for stores. *Sav-On Drugs, Inc.*, 138 NLRB 1032 (1962). While the Board does not give special weight to this factor for retail stores, it continues to apply this factor when evaluating the appropriateness of a

proposed bargaining unit. *In re Weis Markets, Inc.*, 142 NLRB 708, 710 (1963). Such considerations apply in the present case.

Here, the administrative organization of the stores within the Portland Division strongly weighs in favor of a division-wide bargaining unit. However, at a minimum, the stores within the Portland metropolitan area are an appropriate unit. The facts of this case closely track those of *In Re Gray Drug Stores, Inc.*, 197 NLRB 924, 925-926 (1972), where the Board found a single-store unit to be inappropriate, instead ordering an election in a multi-store unit made up of pharmacies in the Miami metropolitan area. Where there is no bargaining history on a broader basis, the Board has frequently found appropriate a geographic grouping of retail chain stores delimited by the bounds of a metropolitan area. *U-Tote-Em Grocery Co.*, 185 NLRB 52, 54 (1970). This factor weighs in favor of rebutting the single-store presumption.

5. Bargaining History

The Union and the Employers have a long-standing history of bargaining. The collective bargaining agreement which covers Albertsons stores—under both the Safeway and Albertsons banners—in the Portland metropolitan area covers multiple employers. The Portland and Vicinity contract has existed as a multi-retailer, multi-store agreement since 1936. The Union has only four stand-alone contracts with Albertsons or Safeways in the state of Oregon at two stores, Florence and Newport. Tr. 386:17-25; 387:14-17. Bargaining history weighs against finding a distinct community of interest for the petitioned-for stand-alone stores. The RD's decision will cause a fracturing of its decades-long bargaining history resulting in inefficiencies and entirely unnecessary waste of resources and expenses.

B. The Regional Director's Decision Results in the Proliferation of Fractured Bargaining Units, which is Contrary to Board Policy and Law.

The Board will not approve of fractured units; that is, combinations of employees that have no rational basis. *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011). A petitioner cannot fracture a unit, seeking representation in “an arbitrary segment” of what would be an appropriate unit, where “no legitimate basis upon which to exclude” certain employees while at the same time including all the other classifications in the petitioned-for unit. *Id.*; *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

Multiple units in a functionally integrated workplace, like the one in this case, create artificial barricades, separating employees and pharmacies that can only serve to impede an employer's ability operate and to effectively manage labor relations. Management becomes driven by these barricades, dividing functionally-integrated pharmacy workers into separate units instead of allowing the Employers to operate in an environment of cohesiveness that creates labor peace. In a complex organization such as the Employer here, where decision-making occurs both at the micro, or departmental level, and on a macro, or organization-wide level, a requirement to conduct labor relations by considering the individual efficiencies and needs of each pharmacy with separate bargaining representatives can grind an operation to a halt.

Allowing three stand-alone units out of 44 pharmacies is the beginning of a proliferation of fractured bargaining units. If Regional Director's decision is allowed to stand, the Employers' pharmacy business would be consumed by these fractured units, creating the very inefficiencies and difficulty with labor relations that the Act seeks to avoid.

C. The Board Should Stay the Election

Pursuant to Section 102.67(j)(1)(i) and (ii), the Employer requests expedited consideration of the request for review and a stay of the mail-ballot election scheduled to begin on June 7, 2022. Expedited consideration and a stay of the upcoming election are warranted under these circumstances.

It would be a waste of administrative and party resources to proceed with elections covering three different stores—with only a few employees at each store—when it is highly likely the Request for Review will be granted and additional stores will be added to the unit. Two of the petitioned-for single store units found appropriate by the Regional Director consist of two employees, while the third consists of four employees. The Employer’s proposed unit includes over 145 pharmacies where none of pharmacy employees in the Portland Division are represented by a labor organization. A stay is necessary to ensure the unit is truly appropriate, thereby protecting the interests and rights of numerous employees who could be wrongly denied the right to vote, as opposed to rushing into an election that is bound for contentious and time-consuming litigation. Staying the election will not unduly harm the employees in the petitioned-for units; they will be provided the opportunity to vote regardless of when the election is held.

Moreover, the Regional Director set an arbitrary date for the mail-ballot election without consulting with the parties or giving due consideration of the Employer’s operations or staffing. See *Cal-Neva Lodge*, 235 NLRB 1167, 1167 (1978) (granting employer’s request for review and staying election pending decision on request). For these reasons, the Board should give prompt consideration to the request for review and stay the mail-ballot election.

In the alternative, the Employer requests that if an election is allowed to proceed, the ballots should be impounded pending a final resolution of the issues on review. See, e.g., *Bergdorf*

Goodman, 361 NLRB No. 11 (2014) (impounding ballots pending the Board's decision after granting review of decision and direction of election).

V. CONCLUSION

For the reasons set forth above, the Board should reverse the decision of the Regional Director in this case.



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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing Employers' Request for Review of the Regional Director's Decision and Direction of Election; Special Request to Stay Election Pending Board's Decision as indicated below:

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